

**Testimony of
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and
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before the Committee on Indian Affairs
United States Senate
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Thank you, Mr. Chairman and Members of the Committee, for inviting the Department to testify today on the progress we have made in our consultation with Indian tribes on organizational issues related to the management of individual and tribal trust assets. It has been six months since we last appeared before the Committee on this important matter. Over that time, we have spent many hours working with Tribal Leaders on critical issues and have made progress in coming to an understanding of their needs and concerns.

Background

The Federal government has held funds in trust for American Indian tribes since 1820. In 1887, the General Allotment Act extended the Federal government's fiduciary duties to individual Indians. The Allotment Act allocated parcels of reservation lands to Indian heads of households and opened "surplus" lands to non-Indian settlement. The allotted lands were to be held in trust by the United States for a designated period. Individual trust accounts were to be set up for each Indian with a stake in those lands. The Indian Reorganization Act of 1934 ("IRA") ended the allotment of tribal lands and extended indefinitely the period for holding allotted lands in trust.

Trust fund accounts consist generally of money received through the commercial use of trust lands, including timber sales, agricultural fees, and oil and gas leases and of funds received from congressional judgment or legal settlement awards. Today, trust lands produce income from more than 100,000 active leases for 350,000 individual owners and 315 tribal owners. Leasing and sales revenues of

about \$300 million per year are distributed to more than 225,000 open Individual Indian Money (IIM) accounts and approximately \$800 million per year is distributed to 1,400 tribal accounts.

Numerous reports filed by the General Accounting Office and Congressional committees have pointed out serious and long-standing problems with the government's management of funds and resources entrusted to its care.

Secretary Norton is committed to reforming trust management and to reaching solutions that will help Indian Country. Secretary Norton initiated a number of actions to address the difficult challenges of trust reform during her first year. These include formulating a proposal to reorganize trust management; creating a new Office of Historical Trust Accounting (OHTA); and initiating development of a new strategic plan for improved trust management. In August 2001, during our formulation of the FY 2003 budget, various issues were identified concerning the trust asset management roles of the BIA, the Office of Special Trustee for American Indians (OST), and other Departmental entities carrying out trust functions. In response, an internal working group was created. The internal working group developed a number of organizational options ranging from maintaining the status quo to privatizing functions to realigning all trust and associated personnel into a separate organization under a new Assistant Secretary within the Department.

While this internal review was underway, Electronic Data Systems (EDS) was undertaking an independent, expert evaluation of the Department's trust reform efforts. On November 12, 2001, EDS presented its report "DOI Trust Reform Interim Report and Roadmap for TAAMS and BIA Data Cleanup: Highlights and Concerns" in which it called for a "single, accountable, trust reform executive sponsor."

The Department decided to propose the formation of an organizational unit called the Bureau of Indian Trust Asset Management (BITAM), which envisioned the consolidation of most trust reform and trust asset management functions located throughout the Department into a new bureau. The Secretary

believed this new Assistant Secretary position would have the needed authority and responsibility for trust reform and Indian trust asset management. Seven regional meetings on the proposed organizational change with tribal officials and account holders were held between December 13, 2001 and February 1, 2002.

- December 13, 2001, Albuquerque, New Mexico
- December 20, 2001, Minneapolis, Minnesota
- January 3, 2002, Oklahoma City, Oklahoma
- January 10, 2002, Rapid City, South Dakota
- January 17, 2002, San Diego, CA
- January 23, 2002, Anchorage, AK
- February 1, 2002, Arlington, VA

It became clear during this process that the Tribal Leaders were opposed to BITAM.

Creation of the Joint DOI/Tribal Leaders Task Force on Trust Reform

At a meeting held on December 13, 2001, in Albuquerque, New Mexico, the National Congress of American Indians (NCAI) proposed the formation of a Task Force charged with providing alternative proposals to the Department on organizational alternatives to reorganize the management of trust services. The Task Force's purpose would be to evaluate organizational options and to submit to the Department one or more alternatives to reorganize the trust management system.

To further develop an improved reorganization plan and achieve broader consensus, Secretary Norton agreed to create a joint DOI/Tribal Leaders Task Force on Trust Reform. The Trust Reform Task Force is to:

“develop and evaluate organizational options to improve the integrity, efficiency, and effectiveness of the Departmental Indian Trust Operations consistent with Indian treaty rights, Indian trust law, and the government-to-government relationship.”

In developing options for an organizational structure, the Task Force has engaged in discussions addressing the underlying problems that the reorganization must address. The purpose of trust reform reorganization is to improve various aspects of carrying out our trust responsibilities, including trust accounting and trust resources management, while complementing and protecting tribal self-government and other, non-fiduciary trust services.

To date, the Task Force has held several multi-day meetings that included weekend meetings as follows:

- February 1 - 4, 2002, in Shepherdstown, WV
- March 8 - 9, 2002, in Phoenix, AZ
- April 25 - 26, in San Diego, CA
- May 19 - 21, 2002, in Minneapolis, MN
- June 13 - 15, 2002, in Bismarck, ND

Task Force Members

The composition of the Tribal Membership of the Task Force was determined by all the tribes and represents a broad cross-section of tribal interests on a regional basis. The Task Force consists of two tribal leaders from each region, with a third tribal leader, from each region, acting as an alternate.

Members of the Federal team consist of senior Department officials, including Deputy Secretary Steve Griles and Assistant Secretary for Indian Affairs Neal McCaleb.

Members of the Task Force have spent an extensive amount of time on this effort. From the very first joint meeting, the Task Force has earnestly attempted to achieve progress on trust reform. The Task Force established special subcommittees to facilitate and coordinate its activities. These panels have met in person or on conference calls numerous times since February. The members of the Task Force have invested an immense amount of their professional and personal time to develop a meaningful approach to trust reform. We are thankful to them for all of their hard work and sacrifices.

Task Force Report and Findings

On June 4, 2002, the Task Force presented to Secretary Norton its initial report containing its findings and recommendations on the DOI trust organization. The Report recommended that the BITAM proposal be replaced by one of the options advanced, which the Secretary has agreed to do. The report also recommends raising Indian policy and program interests to the highest level ever within the Department of the Interior by proposing, as a possible option, the appointment of an Under Secretary to oversee Indian Affairs. In its report, the Task Force states that there is a real need for reform and that the status quo is not acceptable. We could not agree more. We believe the current system must be improved.

The Task Force received a total of 29 separate alternative organizational proposals (or submissions with observations). These alternative proposals provide a wide variety of options for consideration; the options ranged from the status quo to a new Department of Indian Affairs. Some proposals state a preference to place the Department's trust responsibilities outside of DOI.

The Task Force members analyzed the 29 proposals and created several generic composite options reflecting the best features and major elements presented by the entire body of the alternative proposals. At the May 2002 meeting in Minneapolis, Minnesota, the Task Force agreed to initiate

consultations on its recommendations. The Department published the Task Force report in the Federal Register in early June, and scheduled regional consultation meetings throughout June and early July.

On June 18, Secretary Norton met with Tribal leaders in Bismark, North Dakota as part of these ongoing consultations. The meeting was extremely positive and reflected the efforts of both the Tribal members of the Task Force and the Federal members.

Options Recommended by the Task Force

The Task Force presented to Secretary Norton five options for improving the Department's management of Indian trust assets. They are:

- **OPTION 1(a): Create A New Department of Indian Affairs** This alternative envisioned a new Cabinet position and organization. All of the American Indian and Alaska Natives related functions within the Department would be moved to this new organization.
- **OPTION 1(b): Create A New Independent Agency Within The Executive Branch Of Government** This alternative envisioned a new independent agency, possibly temporary, outside of the Department, that would be dedicated to managing all of the American Indian and Alaska Native-related trust functions within the Department.
- **OPTION 2: Create A New Deputy Secretary for Indian Affairs**. This alternative envisioned the creation of a new top-level Interior official who would be responsible for all of the Indian-related functions within the Department.

- **OPTION 3: Create An Organizational Structure With Two Assistant Secretaries** This alternative envisioned the creation of a new Assistant Secretary's position to manage portions of the Department's Indian trust responsibilities
- **OPTION 4: Create An Organizational Subdivision At the Bureau Level** This alternative envisioned the subdivision of the BIA into two or more subordinate organizations. The Subcommittee identified three logical groupings of current BIA functions - Education, Trust Funds and Trust Resources, and Trust Services. The functional grouping facilitates reasonable considerations and permits the agency to increase management attention to key trust responsibilities.
- **OPTION 5: Create A New Leadership Position of Under Secretary and Group BIA Functions** This option envisions the creation of an Under Secretary of Indian Affairs and the grouping of BIA functions into logical units. In large part, it is a composite option reflecting the key features of Option 2 and Option 4.

The Task Force recommended option 2, which would create a New Deputy Secretary for Indian Affairs, option 4, which would create an organizational subdivision at the Bureau Level, and option 5, which would create a new leadership position of Under Secretary and group BIA functions, for consultation, consideration and input from Tribal Leaders. The Task Force report stated that the principal focus of further consultation involves the configuration of line management officials, from top to bottom, in each alternative as well as the grouping of staff support functions.

The Task Force's Evaluation Criteria

The Task Force report points out the following set of criteria used to evaluate the various organizational options that have been put forward. This list is not all-inclusive.

- Does the option ensure that the United States faithfully discharges its trust duties to tribal governments as set forth in treaties, statutes, Executive Orders and case law?
- Does the option support tribal self-determination and self-government?
- Does the option ensure full and continuing accountability for management of Indian trust assets?
- Does the option address the various costs of implementation?
- Does the option ensure that individuals responsible for Indian trust asset management are adequately trained?
- Does the option deal with potential conflicts of interest?
- Does the option address the key issues identified in the Cobell litigation?
- Does the option allow for sufficient flexibility to accommodate tribal needs, special laws or treaties?

Conclusion

The effort that we have put into this consultation process is an indicator of its importance to the Department. The Department is firmly committed to, in consultation with Tribal leaders, finding an appropriate, equitable solution for improving management of Indian trust assets, both tribal and individual. Indian Country deserves real reform, and the Task Force and the Secretary are committed to this goal. The product we ultimately come up with will not have 100 percent support, but we are dedicated to improving the system, to fairness, and to ensuring that future generations of American Indians will inherit a trust management system that provides accountability to individuals and tribes. We appreciate the effectiveness and timeliness of the Task Force's work. We have accomplished a tremendous amount in our five meetings thus far. We are at a *critical stage* now; deciding how to deliver services, how trust functions will be maintained, and how we will have clear and immediate accountability for our services and the individual and tribal accounts. This concludes our statement. We will be happy to answer any questions the Committee may have.